APPENDIX A

United States Court of Appeals
For the Second Circuit

Thomas W. Moore, et al
v.
NYS Court System, et al

94-9328 & 94-9333
NOTICE OF MOTION OF APPELLANTS FOR AS OF RIGHT HEARINGS AS GUARANTEED BY SECOND CIRCUIT LOCAL RULES 34 (c) & (d) & 8/3/95-11/10/95 MENTAL INCOMPETENCY OF "COUNSEL"

Judge whose order is being appealed: Griesa, T. Brief statement of the relief requested: Appellants made "Good Faith Effort" to notify this court of "An Emergency of unforeseen life threatening illness of counsel" to prevent a "firm date of argument" even being scheduled. Additionally, this court received two timely written notices of request of Oral Argument. Local Rules 34 (c) & (d) having been granted to other parties are not subject to DISCRETION of Panel.

"S/Thomas W. Moore"

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied.

Signed U.S.C.J.

UNITED STATES COURT OF APPEALS
FILED AND ENTERED
NOVEMBER 27, 1995
George Lange III, Clerk
SECOND CIRCUIT

Thomas W. Moore, et al v. NYS Court System, et al and Thomas W. Moore, et al v. County of Rockland, et al	:94-9328 & 94-9333 COURT CONSOLIDATED APPELLANTS AFFIDAVIT IN SUPPORT OF MOTION FOR AS OF RIGHT HEARINGS BOTH GUARANTEED BY SECOND SIRCUIT LOCAL RULES 34 (c), (d) AND 8/3/95-11/10/95 MENTAL INCOMPETENCY OF "COUNSEL"

STATE OF NEW YORK)

COUNTY OF ROCKLAND) SS.:

THOMAS W. MOORE, being duly sworn deposes and says:

1. From 8/2/95 through 11/10/95 I was subjected to two, "unforeseen, life threatening illnesses (Emergencies)". I have notified this court that I am acting as "Counsel for myself and my wife". These Unforeseen illnesses of Counsel equal any previously accepted attorney grounds for Postponement of Argument pursuant to Local Rule 34 (c). We perceive our right to postponement to constitute a U.S. Constitutionally guaranteed property right. **Why have we been denied this right by this court?**

2. On 8/2/95 a two hour surgery disclosed that I had a previously undiagnosed, life threatening, malignant tumor that wrapped around my nose in my sinuses and into my right eye.

3. Immediately, I notified Doctor Ng of this litigation and requested Saint Vincent's Hospital to notify this Court so that this court **would not schedule oral argument!**

4. I gave Doctor Ng this Court's name and address. He indicated to me that this notice would immediately be sent to this Court. Attached as **Exhibit 1 is a copy of the 8/3/95 data** (less the

10/12/95 scheduled date) that I gave to Doctor Ng. This letter, I now know was not sent until 9/95.

5. Silence by Saint Vincent's Hospital (after 8/3/95) caused me to **have Probable Cause to believe that this court would not schedule Oral Argument until I became able to re-function as Counsel.**

6. On 8/8/95 I underwent a five hour operation to remove this tumor. During this operation, I lost two pints of blood. To avoid possible AIDS, I was not given blood. This made me **physically incapacitated to act as Counsel.**

7. I was institutionalized and transferred to Saint Vincent's Hospital for extensive radiation treatment. This was the first of **three hospitalizations that prevent my performing as Counsel.**

8. After a two week, at home recovery, my Doctors discovered that a major infection had developed in my face. Antibiotic treatment caused two major ("tumors" as described by Doctor Ng) to occur on both sides of my nose right between my eyes. This prevented me from driving since I wear glasses.

9. These infections constituted a second life threatening unforeseen illness of "Counsel" to occur. Cat Scans were obtained and I was scheduled to receive: (1) Twenty-Seven (27) treatments of Radiation (2) One week in hospital and continuous Chemotherapy treatment (3) A second week in hospital for Antibiotic intravenous treatment.

10. This **second unforeseen illness lasted until 10/1/95** when I returned home and **collapsed.** This collapse is said to be normal due to my loss of 28 pounds. I went from 178 pounds to less than 150 pounds <u>in three weeks</u>. This further incapacitated me from acting as Counsel for myself or my wife.

11. I was **unable to travel** into New York City until <u>10/17/95</u> ie. <u>**FIVE DAYS AFTER**</u> ORAL ARGUMENT WAS <u>**SCHEDULED**</u> BY THIS COURT. I (for the

fourth week) entered Saint Vincent's Hospital for treatment. I again received continuous intravenous Chemotherapy and also twenty-one (21) new radition treatments.

12. The infection, although hopefully cured, continues to create physical problems. This consists of a one inche by three quarter inch (1" x 3/4") **hole right in the middle of my face!** I still have Sinusitis. Sinusitis caused me to develop large amounts of yellow, extremely heavy mucus that accumulates in my prior sinus cavities. This cavity is now one big space on the right side of my nose. This continuous draining mucus is disgusting to witness and disgusting (for me) to live with.

13. The above medical problem causes mucus discharges into both of my eyes. **This sticky mucus makes it difficult to see, read and prepare this motion!** It requires major reconstructive surgery in the future.

14. All of the aforementioned medical reasons have made me: (1) **physically institutionalized** (2) **physically incapacitated** and (3) **mentally incompetent from 8/3/95 through 11/10/95**. I tried to disclose this to the court's representative who telephoned me on or about 10/10/95. **I did not legally waive my rights under local rules 34 (c) and (d)!**

15. This court had no right to demand I waive my rights especially considering this court's knowledge of my illness on 10/10/95. **It was my understanding** that the court **misrepresented** both Local Rules 34 (c) and (d) during this telephone call on or about 10/10/95.

16. I understood that unless I authorized elimination of Oral Argument that this Panel of three Judges would DENY our Appeals. **Fear of Appeals DENIAL is the only grounds** (even being incompetent) upon qhich I agreed to forego Oral Argument.

17. This telephone call constitutes an unconstitutional violation of both of our property

rights. Moreover, I felt intimidated! This cannot result in legal waiver.

18. **I cannot be held legally responsible for any act that I did or failed to do from 8/3/95 through 11/10/95.**

19. Attached Exhibit 2 is a copy of my Wife's letter to our panel on 9/26/95. This constitutes her best effort to comply with Local Rule 34 (c) for notice to the court of our Motion for Postponement of Oral Argument.

20. Attached Exhibit 3 is this **Court's refusal to comply with Local Rule 34 (c)**. This is a copy of letter datd 10/6/95 by Kathleen Brouwer for George Lange III, Clerk of the Second Circuit Court addressed to my wife "after you have discussed this with your husband". This constitutes a second violation of our constitutionally protected property rights!

21. We submit herewith a "Statement Pursuant to Local Rule 34" - "Each of the parties will be given an opportunity to file **a statement** setting forth reasons for hearing oral argument". We consider this Second Circuit Local Rule 34 (d) to constitute a second U.S. Constituionally guaranteed property right **that this Court has denied to both of us**.

Sworn to before me this 16 "S/Thomas W. Moore"
Day of November, 1995.

Patricia E. Ryan
Notary Public, State of New York
Qualified in Rockland County
No. 4983380
Commission Expires June 24, 1996

J.P. TRACY NG, M.D.
DEPARTMENT OF RADIATION

St. Vincent's Hospital & Medical Center
153 West 11th Street
New York, New York 10011

Tel #212-604-8697
Fax #212-604-8701

September 19, 1995

United States Court of Appeals
for the Second Circuit
Office of the Clerk
Room 1702
United States Courthouse
40 Foley Square
New York, New York 10007

RE:

1. **Your Official Notice of Oral Argument certain of Appeals #94-9328 and #94-9333 on 10/12/95**
2. **Request Continuance of 10/12/95 Oral Argument to (on or about 11/13/95) due to major Surgery; infection treatment and therapy of Pro Se Plaintiff Appellant Thomas M. Moore.**

Dear Panel Member Judge:

My patient, Thomas M. Moore, has requested that we submit this letter for Oral Argument Continuance flow currently scheduled 10/12/95 to 11/13/95.

Mr. Moore received emergency surgery at which I assisted for cancer of both the sinus cavity and also the right eye on August 8, 1995. He is currently an in-patient receiving chemotherapy and radiation as a pre-operative and possibly definitive regimen. His therapy will be delivered daily and will last at least until early October. He will require at least two months time to recuperate from treatment.

Respectfully submitted,

J. P. Tracy Ng, M.D.
Attending

JPTN:yo

139 Sleepy Hollow Lane
Congers, New York 10920-1515
September 26, 1995

U.S. Court of Appeals
U.S. Courthouse
Foley Square
New York, NY 10007

Re: Docket No. 94-9328 (L)

Dear Sir:

In reply to your recent notice of oral argument I wish to request an adjournment. My husband, Thomas W. Moore, is at present a patient in St. Vincent's Hospital 153 West 11 Street, New York City, New York 10011. His doctor is John Tracy Ng, M.D. of the Radiation/Oncology Department (212) 604-8696. Dr. Ng is at present sending you a report on my husband's condition which is quite serious.

Please consider this adjournment and we will notify you when Thomas Moore is able to appear at an oral argument.

Sincerely,

Mary L. Moore

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Courthouse
40 Foley Square - Room 1702
New York, New York 10007

GEORGE LANGE III
CLERK

(212) 791-0103

October 6, 1995

Mrs. Mary L. Moore
139 Sleepy Hollow Lane
Congers, New York 10920

Re: Moore v. NYS Court System, 94-9328

Dear Mrs. Moore:

This is to confirm our telephone conversation today in which I told you that the Court was unable to grant an adjournment of oral argument in the above referenced case.

As we discussed, neither you nor your husband are under any obligation to appear for oral argument. If you wish, the Court will decide your appeal based on the arguments set forth in your briefs, which will be thoroughly reviewed. Many litigants proceed this way. On the other hand, should you decide to appear, the Court will allow you to say a few words on your husband's behalf as well as for yourself as appellant, if you so choose.

After you have discussed this with your husband, please call the Calendar Section at (212) 791-1067 to let them know whether or not you will appear for oral argument.

Sincerely,

George Lange III, Clerk
by

Kathleen Brouwer
Operations Manager

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Thomas W. Moore, et al:	**94-9328 & 94-9333** COURT
v.	CONSOLIDATED APPELLANTS
NYS Court System, et al	STATEMENT IN SUPPORT OF
and	MOTION FOR AS OF
Thomas W. Moore, et al	RIGHT HEARINGS **GUARANTEED**
v.	**BY SECOND CIRCUIT**
County of Rockland, et al	**LOCAL RULE 34 (d)**

STATEMENT WHY ORAL ARGUMENT IS NECESSARY

Exhibit 4 hereto is a copy of the 10/18/95 filed O R D E R by HONORABLE JON O. NEWMAN, Chief Judge and HONORABLE RICHARD J. CARDAMONE and HONORABLE JOSE A CABRANES Circuit Judges. **Bold underlined portions of this Order conflict with the Law and Facts**. This would have been covered by Thomas W. Moore during Oral Argument - had Local Rule 34 (c) not been denied to Appellants in these two Court Consolidated Cases and Appeals.

Page 2, second par. erroneously states: "The first federal court suit challenges the state courts' handling of the state court **litigation. This Suit was properly dismissed against the private defendants, the law firm and the lawyer representing the defendants in the state court action, since the complaint failed to allege any governmental action by these two defendants**. The suit was properly dismissed against the remaining defendants who are protected either by judicial immunity or **in the case of the former governor, by Eleventh Amendment immunity."**

Third par. The second suit challenges the termination of Mary Moore's employment. This suit was properly dismissed because on the face of the complaint, **the suit is barred by res judicata arising from the state court litigation**, and, in addition, is barred by the three-year statute of limitations since it was filed more than three years after the employment termination.

Third par. first page: "**the judgments of the District Court** be and they hereby are **AFFIRMED**."

THE LAW WAS INTENTIONALLY MISREPRESENTED BY APPELLEES

This Panel's legal and factual error was directly caused by false statements of both Law and Facts contained in Patterson, Belknap, Webb and Tyler and Winter's Appellees Brief (Hereafter "PBW&T"). Our **Central Theme** in both our Brief and also our Reply Brief, **is intentional deceit of three Prior Courts by PBW&T.** This constitutes violation of FRCP Rule 11. Due to Exhibit 4 this intentional deceit of Courts resulted in the **fourth violation** of New York State Judiciary Law § 487 by PBW&T.

PBW&T Brief is SILENT: Nowhere does PBW&T attempt to rebut FRCP Rule 15(a) interpretation: "Although leave to replead is within the discretion of the district court, refusal to rant it without any justifying reason is an abuse of discretion." Cortec Industries, Inc. v. Sum Holding 949 F 2d 42, (43 2nd Cir. 1991).

Our 11/15/94 Complaint (Brief Pages 8, 13, 22 through 25) contains **260 factual valid causes of action** against both PBW&T and the six Justices. All of these 260 are factual and documented **evidence of the Conspiracy** between PBW&T: (1) six Justices (2) Cuomo as Governor and/or (3) The NYS Court System. Our 11/15/94 evidence is neither denied by PBW&T nor the district court. **We appealed:** (1) the summary judgement dismissal ("lack of a Single Factual Valid Cause of Action"). **(2) the FRCP 15 (a) denial with no reason stated.** How can this Panel **AFFIRM** a district court order that constituted "Abuse of Discretion" and Silence by PBW&T?

> Page 5 PBW&T states: "Judge Griesa dismissed - Moores failed to state a claim for conspiracy involving Mr. Winter and PBW&T because - Mr. Winter and PBW&T did not act under color of state law and all state actors were immune from suit."

Page 13 PBW&T states: "When government entities or officials, with whom private individuals like PBW&T and Mr. Winter allegedly conspire, are held to be immune from suit, no "conspiracy" under color of state law can occur. - Therefore, no section 1983 conspiracy claim can be maintained. See Polur v. Raffe, 727 F. Supp. 810, 816 (S.D.N.Y. 1989), **aff'd in relevant part**,. **912 F. 2d 52 (2d Cir. 1990)** - The state court judges with whom Mr. Winter allegedly conspired are immune - Therefore, because these state court judges are immune from suit, the Moores cannot maintain a civil rights conspiracy claim against Mr. Winter and PBW&T."

PBW&T deceived this Panel as to Law in Polur v. Raffe, supra. (2d Cir. 8/22/90) 53, "5. **Conspiracy Finding that judicial immunity bars civil rights claims against judge does not require dismissal of action against private parties who are accused of conspiring with judge**. 42 U.S.C.A. § 1983." repeated on page 56 left hand column. See Dennis v. Sparks, 449 US 24, 66 L. Ed 185 101 S. Ct. 183 (USSC 11/17/80) Holding "Action under 42 USCS § 1983 against private parties who allegedly conspired with state judge, held maintainable despite judge's immunity" See Srubar v. Rudd, 875 F. Supp. 155, 156, (S.D.N.Y. 12/9/94) 11. "To state § 1983 claim under joint participation theory, plaintiff must allege that at least one conspirator was agent of state action under color of state law, and must allege with particularity **(Tom gave 260 FVCAs)** that public entity conspired with private defendants to deprive of rights;-".

PBW&T and Winter **are liable to Appellants for conspiracy** under 42 USC § 1983 as private defendants for 260 Factual Valid Causes of Action in our 11/15/94 complaint, with: (1) six state Justices (2) Governor Cuomo and/or (3) the NYS Court System **regardless of the public entity immunity as JOINT PARTICIPATION.**

PROCEEDINGS IN STATE COURTS WAS **NOT LITIGATION**

Page 1, PBW&T falsely asserts: "These cases - are the latest attempt by Appellants - to relitigate Ms. Moore's termination - in June 1990".

Our Reply Brief page 6 states: - "**Proceedings begin** when a Request for Judicial Interention was filied and a Justice of the NYS Supreme Court was assigned thereto. This occurred on 10/4/91. Article IV § 1 of the US Constitution required for "Full Faith and Credit" of "judicial Proceedings" **allegedly occurred** in NYS from **10/4/91 through 7/23/93**. - Art IV § 1 also requires: "Congress may - prescribe the Manner in which such - Proceedings shall be proved, and the Effect thereof"

Our Reply Brief on Page 12 & 13 states: "Winter 7/31/91 Answer, **per CPLR 3211 (e) Waived "Arbitration and Award"**. - Winter (PBW&T and Winter) 9/27/91 Motion further deceived Justice Lefkowitz - (PBW&T) intentionally omitted these facts: Mary: (1) was not present at this alleged hearing 3/26/91 (2) was not represented on 3/26/91 (3) did not even discover that said alleged "Arbitration Hearings" occurred until **10/1/91** ie over six months ex post facto, - (4) did not discover until **5/94** that said "Arbitration" was **between Grant v Donnellan** ie, no adversarial contest."

But for **litigation to occur** in the NYS Court system from 10/4/91 through 7/23/94 **REQUIRES** the 3/26/91 Arbitration Hearings be a valid "judicial Proceedings" **against Mary !**

FIRST: If said 3/26/91 hearings did not "Judicially examine" Mary's actions from 3/2/87 through 9/21/90, the entire NYS Court System "Proceedings from 10/4/91 through 7/23/93" were not "judicial Proceedings under Article IV § 1 of the US Constitutuion".

SECOND: If the NYS "Proceedings" are not granted "Good Faith and Credit" they are not "Judicial Proceedings". Justices are not "legally"

entitled to absolute judicial immunity for **NON JUDICIAL ACTS.** All of the NYAG and PBW&T legal citations both at the district court and before this Panel support this Fact.

Our Reply Brief Pages 12 through 17 cover the fact that neither the 12/3/91 alleged NYS Court Order nor the alleged 4/29/93 NYS Court Order state: "This Order is **on the merits**" or "This Order is **with prejudice**" Garg v. Albert Einstein College of Medicine of Yeshivia Univ. 747 F. Supp. 231, 233, wording in Garg, supra. but PBW&T omits: "**Prerequisite to the application of that standard is that the dismissal of original actions be on merits**". PBW&T further deceives this Panel by citing Stanley v. Bertram-Trojan, Inc., 781 F., Supp. 218 (S.D.N.Y. 1991) "Page 219 states **Judgement** Dismissal with Prejudice constitutes final judgment on merits and bars any future suits based on the same cause of action."

"Absolute immunity is designed to free the **judicial process** from the harassment and intimidation associated with litigation" Burns v. Reed, 500 US ___, 114 L. Ed. 547, 563, 111 S. Ct. __. Based upon these Facts and Law neither the NYS Court System Judiciary nor the six NYS Justices are entitled to "**Absolute Judicial Immunity**" based upon their acts in Mary's case.

ELEVENTH AMENDMENT LAW ONLY PROVIDES **QUALIFIED IMMUNITY**

Our reply Brief, Page 31 states: Dwyer v. Regan, 777 F. 2d 825, (2d Cir. 185). "Where a suit is brought against (Cuomo) in (Cuomo's attorney) (capacity) suits for monetary awards from a state official in his individual capacity - are not barred (by the Eleventh Amendment)' - Butz v. E conomou, 438 U.S. 478, 484 "officials of the Executive Branch exercising discretionary functions - need - only **qualified immunity based upon good faith and reasonable grounds**" (Cuomo acts clearly were not made in good faith)" and unreasonable grounds.

All state entities herein are entitled to only qualified immunity (Cuomo, six Justices, NYS Court System). Burns v. Reed, 114 L. Ed. 563, supra. 571, 'it [is] the nature of the function performed, not the identity of the actor who perform[s] it, that inform[s] our immunity analysis' Forrester v. White, 284 US 219, 229, 98 L Ed 2d 555, 108 S Ct 583 (1988) (denying absolute immunity to a judge sued for a non-judicial act)" 564, "the qualified immunity defense has evolved, it provides ample support to all but the plainly incompetent or those who knowingly violate the law" Malley, supra, - Mitchell, - "Where an official could be expected to know that his conduct would violate statutory or constitutional rights, he **should be made to hesitate**'" - Quoting Harlow v. Fitzgerald, 457 US 800 (at 819) (1982) "replacing the common-law subjective standard with an objective standard that **allows liability** only where the official violates "clearly established statutory or constitutional rights of which a reasonable person would have known" Harlow, supra, at 818, -

PBW&T and Winter are liable to Appellants for conspiracy with Cuomo, or any one of these six Justices, or the NYS Court System since what was done from 10/4/91 through 7/23/93 is clear violations of the US Constitution. Moreover state officials are only sued for damages as an attorney for his/her personal assets.

CONCLUSION

Neither Coumo nor all six Justices ever appeared to Answer as private individuals (as attorneys liable under NYS Judiciary Law § 487) Judge Griesa's Summons and Complaint. This w as served on all seven individuals on 2/28/94 by a licensed NYS Process Server. This Process Server also completed supplemental mailed CPLR Service with a filed Certified Return Receipt as evidence of the proper supplemental service. We request this Panel to enter a Reversal Order and to grant

us Default Judgment against these seven private individuals for treble damages due to Mary's wrongful job termination.

Respectfully Submitted:

"S/Thomas W. Moore" Pro Se
Counsel for Oral Argument
for Thomas W. Moore Pro Se
and Mary L. Moore Pro Se
(914) 268-6704

JON

SDNY
94-cv-208
Griesa, J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 18th day of October one thousand nine hundred and ninety-five.

PRESENT: HONORABLE JON O. NEWMAN,
Chief Judge.
HONORABLE RICHARD J. CARDAMONE,
HONORABLE JOSE A. CABRANES,
Circuit Judges.

UNITED STATES COURT OF APPEALS
FILED & ENTERED
OCTOBER 18, 1995
George Lange III, Clerk
SECOND CIRCUIT

----------x
THOMAS W. MOORE, ET AL.
Plaintiffs-Appellants,
v.
NEW YORK STATE COURT SYSTEM, ET AL.,
Defendants-Appellees,
----------x

O R D E R

Appeal from the United States District Court for the Southern District of New York (Thomas P. Griesa, Chief Judge).

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was taken on submission.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgments of the District Court be and they hereby are AFFIRMED.

Thomas and Mary Moore appeal pro se from the judgments entered November 1, 1994, dismission their complaints brought pursuant to 42 U.S.C. § 1983. The complaints attempted to challenge the termination of Mary Moore's employment as Director of Rockland County's Veterans Services Agency, an event that occurred in June 1990. The termination was originally challenged in state court, where a judgment in favor of the defendants was affirmed on appeal. See Moore v. County of Rockland, 192 A.D.2d 1021, 596 N.Y.S.2d 908 (2d Dep't 1993).

The first federal court suit challenges the state courts' handling of the state court litigation. This suit was properly dismissed against the private defendants, the law firm and the lawyer representing the defendants in the state court action, since the complaint failed to allege any governmental action by thee two defendants. The suite was properly dismissed against the remaining defendants who are protected either by judicial immunity or, in the case of the former governor, by Eleventh Amendment immunity.

The second suit challenges the termination of Mary Moore's employment. This suit was properly dismissed because on the face of the complaint, the suit is barred by res judicata arising from the state court litigation, and, in addition, is ba rred by the three-year statute of limitations since it was file more than three years after the employment termination.

Though the District Court dismissed the suits by converting the dismissal motions into motions for summary judgment, no issue arises as to converting the dismissal motions since the suits were subject to dismissal for failure to state a claim; the complaints recounted the state court proceedings and thereby revealed that the federal court complaints were subject to dismassal for failure to state a claim on which relief can be granted.

Appellees have asked for relief to prevent the Moores from pursuing litigation against them arising out of Mary Moore's termination of employment. Such relief is fully warranted.

Accordingly, it is hereby ORDERED that Thomas Moore and Mary Moore are enjoined from filing in any federal court any lawsuit challenging in any way the termination of Mary Moore's employment by Rockland County, without first seeking and obtaining leave to file from the court in which the lawsuit is sought to be filed. Violation of this injunction is punishable by contempt penalties.

This summery order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in the unrelated cases before this or any other court

Chief Judge

Circuit Judges

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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THOMAS W. MOORE, MARY L. MOORE,
Plaintiffs-Appellants,

- against -

NOTICE OF APPEAL

NEW YORK STATE (Hereafter NYS) COURT SYSTEM, MARIO M. CUOMO as Governor of NYS, ANN T. MIKOLL as Justice of NYS Supreme Court Appellate-Division Third Department (Hereafter JSC AD-3d), PAUL J. YESAWICH JR. JSC AD-3d, D. BRUCE CREW III JSC AC-3d, THOMAS E. MERCURE JSC AD-3d, NORMAN L. HARVEY JSC AD-3d, JOAN B. LEFKOWITZ, JSC, PATTERSON, BELKNAP, WEBB & TYLER as a Partnership of Attorneys MARIO M. CUOMO as an Individual Attorney (Hereafter Esq.), ANN T. MIKOLL Esq., PAUL J. YESAWICH JR., Esq., D. BRUCE CREW III Esq., THOMAS E. MERCURE Esq., NORMAN L. HARVEY Esq., JOAN B. LEFKOWITZ Esq., JOHN D. WINTER Esq.,

94 CIVIL 0208 (TPG)

Defendants-Respondents.

----------x

NOTICE is hereby given that Plaintiff-Appellant Pro Se Thomas W. Moore and Plaintiff-Appellant Pro Se Mary L. Moore hereby appeal to the United States Court of Appeals for the Second Circuit **from the JUDGEMENT** from the United States District Court, Southern District of New York, Honorable Thomas P. Griesa: entered in 94 CIVIL 0208 (TPG); entered on the 1st of November with Motion to Alter or Amend filed 11/15/94 Pursuant to Fed. R. Civ. P. 59 (e) **and DENIAL ORDER:** entered

on or about 11/18/94, therefore extending time to notice appeal until, at least, 12/19/94.

Dated: Rockland County N.Y.
December 5, 1994

"S\Thomas W. Moore" (6104)
Plaintiff Pro Se
139 Sleepy Hollow Lane
Congers, NY 10920-1515
(914) 268-6704

By "S\Mary L. Moore" (3424)
Plaintiff Pro Se
139 Sleepy Hollow Lane
Congers, NY 10920-1515
(914) 268-6704

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THOMAS W. MOORE, MARY L. MOORE,
Plaintiffs,
- against -
NEW YORK STATE (Hereafter NYS) COURT SYSTEM, et al.,
Defendants.

94 Civ. 0208 (TPG)

ORDER

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THOMAS W. MOORE, MARY L. MOORE,
Plaintiffs,
- against -
THE COUNTY OF ROCKLAND of New YOrk State, et al.,
Defendants.

94 Civ. 2678 (TPG)

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On September 30, 1994 the court issued an opinion dismission both of these actions on motion of defendants. The court also ruled that plaintiffs' cross-motion in 94 Civ. 2678 for a default judgment and for sanctions should be denied. On November 1, 1994 a judgment was entered based on this opinion.

On November 15, 1994 plaintiffs filed a motion to alter or amend the judgment for other relief. This motion is denied in all respects.

SO ORDERED.

Dated: New York, New York
November 18, 1994

"S\Thomas P. Griesa, USDJ"

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THOMAS W. MOORE, MARY L. MOORE, Plaintiffs,

94 CIVIL 0208 JUDGMENT (TPG)

- against -

NEW YORK STATE (Hereafter NYS) COURT SYSTEM, MARIO CUOMO as Governor of NYS, ANN T. MIKOLL as Justice of NYS Supreme Court Appellate-Division Third Department (Hereafter JSC AD-3d), PAUL J. YESAWICH JR. JSC AD-3d, D. BRUCE CREW III JSC AC-3d, THOMAS E. MERCURE JSC AD-3d, NORMAN L. HARVEY JSC AD-3d, JOAN B. LEFKOWITZ, JSC, PATTERSON, BELKNAP, WEBB & TYLER as a Partnership of Attorneys with Professional Corporations, MARIO M. CUOMO as an Individual Attorney (Hereafter Esq.), ANN T. MIKOLL Esq., PAUL J. YESAWICH JR., Esq., D. BRUCE CREW III Esq., THOMAS E. MERCURE Esq., NORMAN L. HARVEY Esq., JOAN B. LEFKOWITZ Esq., JOHN D. WINTER Esq.,

Defendants.

U.S. DISTRICT COURT FILED OCTOBER 28, 1994 S.D. OF N.Y.

----------x

THOMAS W. MOORE, and MARY L. MOORE, Plaintiffs,

94 CIVIL 2678 (TPG)

- against -

THE COUNTY OF ROCKLAND of New York State, C. SCOTT VANDERHOEF, as County Executive, JAMES HENNESSY, as Deputy County Executive, GERALD DONNELLAN, Individually, BERNARD FALLON, Individually, PATRICIA PRENDERGAST, Individually, JOHN GRANT, Individually, DOES ONE through FIVE HUNDRED,

Defendants.

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The defendants in both cases having moved to dismiss, alternatively, defendants in 94 Civ. 0208 having moved to transfer the action to the Northern District of New York, plaintiffs having cross-moved in 94 Civ. 2678 for a default judgment and for sanctions, and the said motions having come before the Honorable THOMAS P. GRIESA, United States District Judge, and the Court on its own initiative having treated to motions to dismiss as ones for summary judgment, and the Court thereafter on October 5, 1994, having rendered its opinion (#73772); denying plaintiffs' cross-motion in 94 Civ. 2678 for a default judgment and for sanctions, and granting the motions of defendants in 94 Civ. 0208 and 94 Civ. 2678, and dismissing both actions, it is,

ORDERED, ADJUDGED AND DECREED: That plaintiffs' cross-motion for a default judgment and for sanctions be and it is hereby denied, and it is further,

ORDERED, that the motions of defendants in 94 Civ. 0208 and 94 Civ. 2678 be and they are hereby granted, and it is further ORDERED, that both action be and they are hereby dismissed.

DATED: New York, New York
October 28, 1994

"S\James M. Parkison"
Clerk

By: "S\Ronald A. Church"
Deputy Clerk

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 11/1/94

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

THOMAS W. MOORE, MARY L. MOORE, Plaintiffs,

94 CIV. 0208 (TPG)

- against -

NEW YORK STATE (Hereafter NYS) COURT SYSTEM, MARIO CUOMO as Governor of NYS, ANN T. MIKOLL as Justice of NYS Supreme Court Appellate-Division Third Department (Hereafter JSC AD-3d), PAUL J. YESAWICH JR. JSC AD-3d, D. BRUCE CREW III JSC AC-3d, THOMAS E. MERCURE JSC AD-3d, NORMAN L. HARVEY JSC AD-3d, JOAN B. LEFKOWITZ, JSC, PATTERSON, BELKNAP, WEBB & TYLER as a Partnership of Attorneys with Professional Corporations, MARIO M. CUOMO as an Individual Attorney (Hereafter Esq.), ANN T. MIKOLL Esq., PAUL J. YESAWICH JR., Esq., D. BRUCE CREW III Esq., THOMAS E. MERCURE Esq., NORMAN L. HARVEY Esq., JOAN B. LEFKOWITZ Esq., JOHN D. WINTER Esq.,

OPINION

Defendants.

----------x

THOMAS W. MOORE, MARY L. MOORE, Plaintiffs,

94 CIV. 2678 (TPG)

- against -

THE COUNTY OF ROCKLAND of New York State, C. SCOTT VANDERHOEF, as County Executive, JAMES HENNESSY, as Deputy County Executive, GERALD DONNELLAN, Individually, BERNARD FALLON, Individually, PATRICIA PRENDERGAST, Individually, JOHN GRANT, Individually, DOES ONE through FIVE HUNDRED,

Defendants.

----------x

These are two pro se cases by Thomas and Mary L. Moore, husband and wife. They arise out of Ms. Moore's alleged wrongful termination as Director of Rockland County's Veterans Services Agency and also out of a New York State court action unsuccessfully challenging that termination.

The defendants in both 94 Civ. 0208 and 94 Civ. 2678 move to dismiss. Alternatively, defendants in 94 Civ. 0208 move to transfer the action to the Northern District of New York. Plaintiffs cross-move in 94 Civ. 2678 for a default judgment and for sanctions.

Since matters outside the complaints are considered, the defense motions to dismiss will be treated as ones for summary judgment. As such, they are granted. Plaintiffs' cross-motion is denied.

FACTS

Ms. Moore was terminated from her Rockland County position in 1990. In 1991 Ms. Moore commenced an action in Supreme Court, Rockland County, against the County, the County Executive, the Deputy County Executive, the Assistant to the County Executive and another employee of Ms. Moore's agency. In this action, Ms. Moore made wide ranging allegations of violations of state law, discrimination in violation of the United States Constitution, and common law torts. On December 3, 1991 Justice Lefkowitz granted defendants' motion for summary judgment and dismissed the action. This ruling was affirmed by the Appellate Division, Third Department, on April 29, 1993. The decision was by Justices Crew, Harvey, Mercure, Mikoll, and Yesawich.

Ms. Moore has now brought two actions in federal court which are the subject of the present motions. In these actions she is joined by her husband.

In 94 Civ. 0208, plaintiffs sue the New York State Court System; Governor Cuomo in his official and individual capacities; the trial justice and the appellate justices who decided Ms. Moore's

state court action, sued in their official and individual capacities; Patterson, Belknap, Webb & Tyler and a partner in that firm, John D. Winter, who represented the defendants in the state court action. Plaintiffs allege that the various defendants conspired to violate the federal constitutional rights of plaintiffs by abusing the legal process in obtaining the dismissal of Ms. Moore's state court action. There is an allegation that Governor Cuomo participated in this conspiracy to protect his political future. One of the allegations is that defendants subjected plaintiffs to cruel and unusual punishment in violation of the Eighth Amendment by obtaining the dismissal of the lawsuit.

In 94 Civ. 2678 plaintiffs sue the County of Rockland; the current County Executive and the current Deputy County Executive, as well as the individual defendants sued in the prior state court action. With some minor variations, the allegations are the same as those made in the state court action.

DISCUSSION

94 Civ. 0208

This court lacks subject matter jurisdiction over many of the claims asserted in this action. The Eleventh Amendment to the United States Constitution provides:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Plaintiffs are apparently residents of New York, so that they are not citizens of "another State" or citizens of a "Foreign State." Although the Eleventh Amendment does not expressly forbid the federal courts from entertaining suits against a state by citizens of the same state, the Supreme Court has interpreted this provision as affirming a broad principle of sovereign immunity which does

prohibit such suits. Hans v. Louisiana, 134 U.S. 1 (1890); Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 98-99 (1984).

There is no waiver or limitations of sovereign immunity applicable to the claims in 94 Civ. 0208.

The immunity of the State of New York applies to an agency of the state and to its governor. Thus the immunity applies to the New York State Court System and to Governor Cuomo. Pennhurst, 465 U.S. at 98-99, 101. The doctrine also applies to the justices who decided the state court action. Stump v. Sparkman, 435 U.S. 349 (1978).

To the extent that the complaint attempts to allege ultra vires actions on the part of the above defendants, perhaps in the attempt to avoid the state immunity doctrine, these allegations are so general and so lacking in any factual substance that they must be dismissed as failing to constitute legally cognizable claims.

With regard to the Patterson Belknap firm and the partner in that firm who defended the state court action, there is nothing approaching a factually sufficient statement of a valid cause of action against these defendants.

The basic problem with 94 Civ. 0208 is that it is an attempt to make a collateral attack upon a final state court judgment, and this attack is in the form of extreme rhetoric purporting to be couched in legal theories. No valid cause of action is stated against any of the defendants, and the action is dismissed.

94 Civ. 2678

The doctrine of res judicata so clearly applies to the 94 Civ. 2678 action that little discussion is required. The complaint basically does nothing more than repeat the state court allegations. It is true that Mr. Moore has been added as a plaintiff and that the successors to certain of the former county officials have been added as defendants. It is also true that there

are certain additional theories relating to the First, Fifth and Fourteenth Amendments to the United States Constitution. But under well established law these differences do not avoid the application of res judicata. The fact remains that the federal court will not, and cannot, relitigate the issues decided by the state court.

CONCLUSION

The motions of defendants in 94 Civ. 0208 and 94 Civ. 2678 are granted and both actions are dismissed. Plaintiffs' cross-motion in 94 Civ. 2678 for a default judgment and for sanctions is denied.

SO ORDERED.

Dated: New York, New York
September 30, 1994

"S\Thomas P. Griesa" U.S.D.J.

APPENDIX D

SUPREME COURT - APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

July 23, 1993

66853 - MARY MOORE, Appellant,
v
COUNTY OF ROCKLAND et al., Respondents

Motion for permission to appeal to the New York State Court of Appeals or to United States District Court denied, without costs.

MIKOLL, J.P., YESAWICH JR., MERCURE, CREW III, and HARVEY, JJ., concur.

APPENDIX E

SUPREME COURT - APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

Decided and Entered: April 29, 1993 66853

MARY MOORE,
Appellant,

v

COUNTY OF ROCKLAND ET AL.,
Respondents

MEMORANDUM AND ORDER

Calendar Date: February 17, 1993

Before: Mikoll, J.P., Yesawich Jr., Mercure, Crew III and Harvey, JJ.

Reilly & Lewis (Gerald D. Reilly of counsel), White Plains, for appellant.

Patterson, Belknap, Webb & Tyler (John D. Winter of counsel), New York City, for respondents.

Mikoll, J.P.

Appeal (transferred to this court by order of the Appellate Division, Second Department) from an order of the Supreme Court (Lefkowitz, J.), entered December 3, 1991 in Rockland County, which, inter alia, granted defendants' motion for summary judgment dismissing the complaint.

Plaintiff, an employee of the Rockland County Veterans Service Agency (hereinafter VSA) since November 1973, was appointed director of the VSA in November 1981 by the County Legislature. She was reappointed to a four-year term by the County Legislature in 1983. There was a change in the Rockland County form of government in 1986 and in 1988 defendant County Executive reappointed her as director of the VSA. Under Executive Law § 357, the director of the VSA served at the pleasure of

the County Executive but had the power to appoint assistants and employees who served at the director's pleasure (see, Executive Law § 357 [1]).

Friction developed in the employment relationship between plaintiff, the County Executive and other County officials from October 1987 through June 1990, including an ongoing feud between plaintiff and the County Executive over the employment of defendant Gerald Donnellan as a veterans counselor. Plaintiff disciplined Donnellan several times contrary to the County Executive's directives. In June 1990, the County Executive allegedly fired plaintiff for insubordination.

Plaintiff then commenced this action alleging seven causes of action, claiming that defendants (1) conspired to unlawfully discharge plaintiff, cause her mental distress, defraud her and violate State law, (2) defrauded her, (3) denied her hearing in violation of Civil Service Law § 75, (4) intentionally inflected emotional distress on her, (5) terminated her employment in violation of Civil Service Law § 75-b, (6) violated a provision of the Administrative Code of Rockland County requiring the County Executive to notify the County Legislature of plaintiff's termination, and (7) violated plaintiff's Federal constitutional rights under 42 USC § 1983. Defendants' motion to dismiss the complaint for failure to state a cause of action or, in the alternative, for summary judgment was granted and the complaint dismissed by Supreme Court. This appeal by plaintiff ensued.

Supreme Court did not err in dismissing plaintiff's complaint. The order of Supreme Court therefore should be affirmed. Supreme Court properly dismissed plaintiff's causes of action for conspiracy, fraud and intentional infliction of emotional distress because plaintiff was an employee at will and there is no allegation that there was an express limitation on the County Executive's right to terminate her (see, Murphy v. American Home Prods. Corp., 58 NY2d 293, 300-301; Novinger v Eden Park Health Servs., 167 Ad2d 590, lv denied 77 NY2d 810). Under Executive Law § 357 (1), plaintiff served at the pleasure of the County

Executive. Absent a contractual constitutional or statutory limitation on the County Executive's power, her employment as director could be terminated at any time (see, Murphy v. American Home Prods. Corp., supra; see also, Connolly v. Macklowe Real Estate Co., 161 AD2d 520, 522).

Plaintiff's first cause of action, couched in terms of conspiracy, states, in reality, no more than a claim for wrongful discharge and is merely an attempt to evade the fact that there is no cause of action for the wrongful discharge of an at-will employee unless certain exceptions are shown to exist, none of which are present here (see, Murphy v American Home Prods. Corp., supra, at 300-302; see also, Wieder v. Skala, 80 NY2d 628).

Plaintiff cannot rely on an estoppel theory, as estoppel requires plaintiff's reasonable reliance upon a representation or act evincing defendants' position (see e.g., Triple Cities Constr Co. v Maryland Cas. Co., 4 NY2d 443, 448), which plaintiff has not demonstrated existed here, especially in light of the provisions of Executive Law § 357 (1).

Plaintiff's cause of action for fraud lacks the required specificity as to the misrepresentation allegedly made by defendants (see, CPLR 3016 [b]; see also, Monaco v. Saint Mary's Hosp. of Troy, 184 AD2d 985). Moreover, as plaintiff was an employee at will, she is unable to demonstrate that she reasonably relied on any misrepresentations (see, Bower v Atlis Sys., 182 AD2d 951, 953, lv denied 80 NY2d 758).

Plaintiff's cause of action for intentional infliction of emotional distress fails for lack of any allegation of defendants' extreme or outrageous conduct that could be characterized as "'***utterly intolerable in a civilized community'" (Murphy v American Home Prods. Corp., supra, at 303, quoting Restatement [Second] of Torts § 46 [1], comment d; see also, Methe v General Elec. Co., 150 AD2d 853, lv dismissed 74 NY2d 842; Vardi v Mutual Life Ins. Co. of N.Y., 136 AD2d 453, 456). Additionally, plaintiff may not evade the at-will contract rule by merely asserting her claim for wrongful

discharge under the guise of a claim for intentional infliction of emotional distress (see, Murphy v American Home Prods. Corp., supra, at 303).

Plaintiff's argument that her notice of claim sufficiently identified her causes of action for conspiracy, intentional infliction of emotional distress and violation of Rockland County law fails, as a claimant may not raise in the complaint causes of action or legal theories that were not directly or indirectly mentioned in the notice of claim and that change the nature of the earlier claim or assert a new one (see, Wanczawski v City of New York, ____ AD2d ____ [Oct. 8, 1992, 1st Dept]; Mazzilli v City of New York, 154 AD2d 355, 357; Demorcy v City of New York, 137 AD2d 650, 650-651). Here, the notice of alia fails to state intentional emotional distress as part of the nature of the claim and did not give adequate information to alert defendants to investigate the cause of action; it is therefore barred (see, Wanczawski v City of New York, supra; Mojica v New York City Tr. Auth., 117 AD2d 722; cf., DeLeonibus v Scognamillo, 183 AD2d 697).

The notice of claim likewise failed to specify which provision of the Rockland County Charter was violated and consequently did not sufficiently identify a cause of action for violation of any Rockland County law. Further, the latter cause of action asserts a violation of Administrative Code of Rockland County § 5-32E, while the notice of claim mentions only the County Charter. Thus, defendants were not given sufficient notice of the alleged Administrative Code violation to enable them to investigate the claim.

The conspiracy claim for wrongful discharge in the complaint was not sufficiently identified in the notice of claim in that the wrongful discharge therein was stated to be in violation of certain statutes, the County Charter and the Federal Due Process Clause, while the wrongful discharge in the cause of action for conspiracy alleged in the complaint was based primarily on common-law

wrongful discharge. The notice was therefore deficient in this respect.

Plaintiff's cause of action based on defendants' alleged violation of Civil Service Law § 75-b was properly dismissed, not because the complaint was facially deficient for failing to state the particular law, rule or regulation violated, as Supreme Court found, but rather because of plaintiff's testimony given at the General Municipal Law § 50-h hearing. That testimony met defendants' burden of demonstrating a prima facie entitlement to summary judgment (see, Alvarez v Prospect Hosp., 68 NY2d 320, 324). The testimony showed that plaintiff never reported actions that she reasonably believed established improper governmental action, necessary for a Civil Service Law § 75-b [2] [a]; Matter of Plante v Buono, 172 AD2d 81, 85-86, lv denied 79 NY2d 756). Moreover, as Civil Service Lawl § 75-b applies only to retaliatory discharges by public employers, not to actions by fellow public employees (see, Civil Service Law § 75-b [2] [a]), the cause of action for violation of Civil Service Law § 75-b may not be maintained against the individual defendants.

Plaintiff's cause of action based on violations of 42 USC § 1983 relating to gender and 1st Amendment discrimination claims was properly dismissed. As to her gender discrimination claim, plaintiff failed to present sufficient admissible proof to rebut defendants' prima facie showing of their entitlement to summary judgment (see, Alvarez v Prospect Hosp., supra; see also, Heffernan v Colonie Country Club, 160 AD2d 1062, 1063). Plaintiff's 1st Amendment claim was also properly dismissed (see, Elrod v Burns, 427 US 347, 367-368). Plaintiff, as director of the VSA, was a government official in a policy-making position, had discretion in her job functions and was responsible for dissemination of information to the public relating to an outreach program (see, Savage v Gorski, 850 F2d 64, 68-69).

Finally, we reject defendants' alternative argument that Supreme Court's dismissal of plaintiff's conspiracy and intentional infliction of emotional distress claims was proper because

they were not commenced within the one year and 90-day limitation period set forth in General Municipal Law § 50-i (1) and are therefore time barred. These two causes of action did not arise until plaintiff's termination, when all the elements of her cause of action for each claim had been satisfied (see, e.g., Vitale v Hagan, 132 AD2d 468, 469, mod on other grounds 71 NY2d 955). The summons was served on June 20, 1991, well within the allotted time.

We have examined plaintiff's other arguments for reversal and find them to be without merit.

Yesawich Jr., Mercure, Crew III and Harvey, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

"S\Michael J. Novack"
Michael J. Novack, Clerk

APPENDIX F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

----------x

MARY MOORE — Index No. 7036/91
Plaintiff

- against -

THE COUNTY OF ROCKLAND et al
Defendants

----------x

Lefkowitz, Jr.

Plaintiff, the former Director of the Veterans Service Agency for Rockland County, as sued her former employer and various public officials for perceived wrongs that resulted in her allegedly improper termination. Defendants move for summary judgment to dismiss all seven causes of action. Plaintiff cross-moves to amend the complaint to cure certain procedural defects.

Cause of action Nos. 1 (for conspiracy), 4 (mental distress) and 6 (pursuant to certain provisions of the Rockland County Charger) are dismissed for failure to sufficiently identify these claims in the notice of claim. Rosen & Bardunias v County of Westchester, 158 AD2d 679 (2nd Dep't 1990), cert. den., ____US____, 111 S. Ct. 962 (1991). See Caselli v City of New York, 105 AD2d 251 (2nd Dep't 1984). The second cause of action in fraud and for material misrepresentation is dismissed because plaintiff was an employee at will. Murphy v American Home Prods. Corp., 58 NY2d 293 (1983); Executive Law § 357.

The third cause of action based on section 75 of the Civil Service Law is dismissed as plaintiff was not a civil servant within the meaning of that statute and had no property right to continued employment. Executive Law § 357. Additionally, the stigmatization claim relating to publications that occurred after termination of her job do not implicate due process rights. Gentile v Wallen, 562 F2d 193, 198 (2nd Cir. 1977); see Bishop v

Wood, 426 US 341, 348-49 (1976); Paul v Davis, 424 US 693, 710 (1976). Furthermore, the charges of insubordination are not sufficient to require that a name clearing hearing be held. Matter of Lutwin v Allenge, 58 NY2d 889 (1983); Saraceno v City of Utica, 733 F. Supp. 538 (DCNY ND 1990); see New York Health & Hosp. Corp. v Local 2507, 139 Misc. 2d 376 (Supreme Ct New York 1988).

The fifth cause action premised on the whistle blower statute, Civil Service Law § 75-b, is dismissed because plaintiff has failed to identify any law, rule or regulation allegedly violated. Connolly v Harry Mackowe Real Estate Co., 161 AD2d 520 (1st Dep't 1990).

The seventh/cause of action to the extent it duplicates the other causes of action but uses section 1983 of 42 USC as its fulcrum is dismissed for the reasons previously expressed. Brody v Leamy, 90 Misc. 2d 1 (Supreme Ct. Westchester 1977). To the ex tent that plaintiff claims age and sex discrimination those claims are also dismissed as plaintiff was replaced by an older person of the same sex. Goldberg v. B. Green & Co. Inc., 836 F. 2d 845 (4th Cir. 1988) (construing the Age Discrimination in Employment Act of 1967, 29 USC §§621-34). Insofar as plaintiff claims violation of her First Amendment rights, they too are dismissed upon the ground that plaintiff was a policy maker and subject to discharge for speaking out contrary to her employer's wishes. Branti v Finkel, 445 US 507 (1980); Elrod v Burns, 427 US 347 (1976); Savage v Gorski, 850 F.2d 64 (2nd Cir. 1988).

The claim for punitive damages is dismissed. Sharapata v Town of Islip, 56 NY2d 332 (1982); City of Newport v Fact Concerts, Inc., 453 US 247 (1981).

Defendants correctly point out that the complaint fails to allege compliance with section 50-e of the General Municipal Law and improperly states damages against a municipality in violation of CPLR 3017 (c). Plaintiff's cross-motion to amend the complaint to cure these non-jurisdictional defects is denied as academic.

The Court has considered the following papers on these motions: (1) defendant's motion to dismiss dated September 26, 1991 with supporting affidavits of James Anderson and John Winter dated September 25, 1991 and exhibits A-D; (2) notice of cross-motion dated November 1, 1991 with affirmation of Gerald Reilly and affidavit of Mary Moore both dated November 1, 1991 with exhibits A-PP; (3) order dated October 29, 1991; (4) transcript of 50-H examination; (5) defendants' memoranda of law (original and reply) plaintiff's memorandum of law; and (6) plaintiff's surreply.

This constitutes the decision and order of the Court.

Dated: December 3, 1991 Entered: "S\J.S.C."

Reilly & Lewis, Esqs.
Attorneys for Plaintiff
175 Main Street
Suite 800
White Plains, NY 10601

Patterson, Belknap,
Webb & Tyler, Esqs.
Att. for Defendants
30 Rockefeller Plaza
New York, NY 1011

APPENDIX G

United States Court of Appeals
For the Second Circuit

Thomas W. Moore, Mary L. Moore, 94-9333
Plaintiff-Appellants
v.
COUNTY OF ROCKLAND, et al
Defendant-Respondents.

NOTICE OF MOTION for a disinterested panel to HEAR OUR APPEAL

For a DISINTERESTED PANEL OF JUDGES to decide our appeal based only upon facts and law.

"S/Thomas W. Moore"
"S/Mary L. Moore"

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied; normal assignment procedure will apply.

Signed U.S.C.J.

UNITED STATES COURT OF APPEALS
FILED
SEPTEMBER 14, 1995
George Lange III, Clerk
SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

Moore v. NAYS Court System, **PATTERSON**, BELKNAP, WEBB & TYLER, Et. Al.

:94-9328

APPELLANTS' AFFIDAVIT IN SUPPORT OF OUR MOTION TO OBTAIN A **DISINTERESTED PANEL** TO HEAR OUR APPEAL

----------x

STATE OF NEW YORK)
COUNTY OF ROCKLAND) SS.:

THOMAS W. MOORE and MARY L. MOORE, being duly sworn depose and say:

1. We, Thomas W. Moore (Hereafter "Tom") and MARY L. MOORE) (Hereafter "Mary") are appellants pro se in the above appeal and respectfully move this Court to obtain a **disinterested panel** to hear our appeal. You are hereby notified that matters in our attached Memorandum in Support, double your difficulty, but address entirely different problems than this affidavit.

2. Exhibit #1 hereto is Tom's: (a) 12/29/93 Letter to Chief Judge Newman. (b) **12/29/93 letter to Chief Judge Griesa**, (c) two USPS receipts dated 12/29/93 for Express Mail to both Judges. This Court should note that #EF675761917US is a USPS number by which Tom verified that **Judge Griesa's** letter and attached "Complaint" arrived at the **USDC** within the one day promised delivery date. (d) the "Complaint", page 1, that accompanied Tom's letter. (e) January 5, 1994 letter reply from Carolyn Clark Campbell, Chief Deputy Clerk with copy to Chief Judge Newman.

3. We request this Court to read Tom's one page 12/29/93 letter and examine each defendant. More importantly, we also ask you to be fully aware of the major "Conflicts of Interest" that both Judge Griesa and also the entire SDNY had on 12/30/93 and thereafter. Judge Griesa was notified **Patterson, Belknap, Webb & Tyler** (Hereafter

"PBW&T") and John D. Winter Esq. are named as fully liable defendants contained on "Complaint" page 1.

4. Tom sent this 12/29/93 letter to Judge Griesa for the same purpose that Tom today submits this Motion to this Second Circuit Panel of Judges. Tom knew that Harold R. Tyler Jr., Esq. had previously been a USDJ, SDNY from 1962 through 1975. Tom also knew that Twenty-One of the Partners/Attorneys in PBW&T had previously been law clerks for federal Judges. Defendants Winter and seven other Partners/Attorneys had worked for currently presiding USDJs, SDNY. Tom expected Judge Griesa as a matter of ethics to recuse any USDJ, SDNY who had these clear "Conflicts of Interest".

5. What Tom did not discover until 11/21/94 were the facts: (1) Judge Griesa and Judge Tyler served as USDJs SDNY in the same building from 1972 through 1974. (2) Judge Michael B. Mukasey, who was assigned to 94 Civ. 0208 (MBM) (Hereafter "0208") from 1/14/94 through 4/5/94, had been a Partner in PBW&T in 1987. (3) Judge Robert P. Patterson Jr. also a currently presiding USDY, SDNY, had also been a Partner in PBW&T in 1987.

6. Tom, being Pro Se, is not an attorney who would have access to membership lists or old Martindale and Hubbles from which to determine all Federal Judges who were prior Partners in PBW&T. Tom is further hampered by the fact that Tom cannot obtain membership lists of certain organizations and committees that Harold R. Tyler Esq. is a former or current member ie. (A) "Chairman, Standing Committee on Federal Judiciary 1986-1987" (B) "Chairman, William Nelson Foundation 1989 through today's Date," (C) "Law Center Foundation" (D) "Practicing Law Institute" (G) "Institute of Judicial Administration" (H) "Federal Bar Council (President, 1979-1980)", (I) "Fellow, American College of Trial Lawyers" etc..

7. Tom's non-access to these lists, that would be available to any attorney, causes us to effectively be denied our right to file a F.R.A.P. Rule 20 "Disqualification of Judges Motion" pursuant to 28 USC § 455 with respect to any panel

member who will be assigned to decide our appeal!

8. Tom alerts this Court to the fact that three PBW&T Partner/Attorneys served as law clerks for three Second Circuit Judges. Tom does not know possible family relationships. As an example, is there any family relationship between Second Circuit Judge Ralph K. Winter and respondent John D. Winter Esq.? Tom reminds this Court that there are 451 attorney respondents in this appeal. Each, of these 451, open possible "Conflicts of Interest" for Second Circuit Judge panel members.

9. We request you to seriously ask yourself "could I ethically act as a disinterested Judge" of each of these 451 respondents named and served both officially and also personally as stated on said "Complaint" page 1 as to both liability and also damages?

10. We have been burned by Judge Griesa's refusal to answer as Judge Newman answered. Our experience in the USDC, SDNY causes Tom to seriously doubt that any judge in the Second Circuit is sufficiently disinterested to render a decision based only upon facts and law. If you determine that Tom's doubt is correct, Tom requests Chief Judge Newman to invoke 28 USC 291 (a) and (b).

Sworn to before me this 27th Day
of January 1995 "S/Thomas W. Moore"

"S/Ruth O'Brien"
Notary Public, State of New York
No. 4724266
Qualified in Rockland County
Commission Expires July 31, 1996

Sworn to before me this 27th Day
of January 1995 "S/Mary L. Moore"

"S/Ruth O'Brien"
Notary Public, State of New York
No. 4724266
Qualified in Rockland County
Commission Expires July 31, 1996

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

MOORE

v.

NAYS COURT SYSTEM, **PATTERSON**, BELKNAP, WEBB & **TYLER**, Et. Al.

94-9328

APPELLANTS' MEMORANDUM OF LAW IN SUPPORT OF OUR MOTION TO OBTAIN A **DISINTERESTED PANEL** TO HEAR OUR APPEAL

----------x

ARGUMENT
POINT I

WILL FEDERAL JUDGES **TRULY** ACT TO AID EVERY STATE JUDGE?

94-9328 and its lower court case (0208) are intended to **help** every States' Judges, Justices, Magistrates etc.! Appellants Tom and Mary, at no time, have considered, drafted or pleaded (0208) for the purpose of causing injury to either the six officially and individually named defendant-respondent NAYS Justices or to defendant-respondent NAYS Court System. Our 7/4/76 Declaration of Independence states: "**(King George III) has made Judges dependent on his Will along -**". 94-9328 and (0208) are the result of : "**NAYS Governor Mario M. Cuomo Esq. made both these six NAYS Justices and if necessary the NAYS Court System dependent on his will alone-**". Tom acknowledges our 7/4/76 Declaration is not law. However, US Constitution (1) Article I § 10 "No State shall - grant any title of Nobility" and (2) Article IV § 4 "The United States shall guarantee to every State in this Union a Republican Form of Government," are two Constitutional Provisions violated by Mario M. Cuomo Esq. from 6/24/90 through 12/31/94. This is the reason (0208) and 94-9328 must be **won**!

State Judges, Justices etc. are dependent on each Governor's Will. Every State Court is a "Governor's Court". Not only does this fact violate both aforestated two Constitutional Provisions but also this fact causes every State Judge, Justice etc. to violate the ABA "Code of Judicial Conduct - Canon 1 'A Judge Should Uphold

the Integrity and Independence of the Judiciary". Tom repeats POINT I's Headline "Will Federal Judges truly act to aid every State Judge?" Clearly there are "Problems" with Federal Judges allowing two Pro Se Plaintiffs to sue 344 NYS Judges and Justices in Federal Court. But there has not been a single attorney who brought this absolutely necessary suit **during the past 206 years!** If not now - when? If not us - who?

If we truly intend to "Aid" every state judge, justice etc., why did we sue these 344 NYS Judges and Justices? The New York Attorney General (Hereafter "NYAG") and the USDC, SDNY have ensured that we are now able to fully sue New York State Taxpayers. This was Cuomo's plan when he ordered the 3/18/94 Motion by the NYAG in (0208). Clearly it would be "easier" to obtain damages from NYS Taxpayers than from these NYS Judges and Justices individually. Tom knew this long before (0208) was drafted. However, payments from NYS Taxpayers will **not cause the ABA** - National and NYS lobbyists to open their legislation war chests to do what needs to be done about "Governor's State Courts". Tom believes that if this case hits 344 NYS Judges and Justices **hard enough** that the ABA war chests will be forced to be opened to ensure that Cuomo's acts are not duplicated, repeatedly, in the future.

POINT II
CAN ANY JUDGE BOTH ETHICALLY AND ALSO SUBCONSCIOUSLY DECIDE OUR APPEAL BASED SOLELY UPON FACTS AND LAW?

Two legal issues are argued by defendants. First is "Judicial Immunity". Second is The USSC's interpretation that the Eleventh Amendment provides a State with absolute "Waiver Immunity" against any suit brought by a citizen of said State against itself and also against any of its State "Agents". Tom in the USDC, SDNY provided 210 Factual Valid Causes of Action (Hereafter "FVCA") against defendants NYS Court System, six NYS Justices, officially and individually as attorneys and Mario M. Cuomo officially as Governor of NYS and individually as an attorney. Tom provided 50 FVCAs against defendant **Patterson**, Belknap, Webb &

Tyler (Hereafter "**PBW&T**") and individually named defendant John D. Winter Esq..

Tom cited four USSC Cases, their citation and holdings that are USSC Exceptions to both a State's and also its "Agents" "Waiver Immunity" that clearly apply to all 345 NYS "Agents" in 94-9328. Tom's 210 FVCAs and Four Exceptions eliminated Defendants "Agents" with either "Judicial Immunity" or "Waiver Immunity". Tom's 50 FVCAs eliminate **PBW&Ts**' and Winter's "evasion of liability". The USDC, SDNY was totally unconcerned with either Facts or Law that are - almost 100% - in Tom's and Mary's favor. All 451 defendant-respondents possess **subconscious ties** with the USDJs, SDNY that create impenetrable barriers that hold all 451 respondents "immune" to liability or damages brought in any suit. "Conflicts of Interest" asserted in our affidavit are only part of these **ties**. Other **subconscious ties** are more crucial to the USDC's disregard of both Facts and also Law than our affidavit's stated "Conflicts of Interest".

The past 50 years have seen an evolution in Medical Malpractice Cases. The primary reason is that physicians were finally convinced that it was in their best interest to "**testify**" that certain other physicians were "**negligent**" in specific instances. Similarly, Attorney Malpractice Cases have evolved even in spite of the double standard required to show liability. Both of these evolutions would not have occurred were it not **profitable** for attorneys to represent a layperson in said malpractice trial. The second reason is that both Physicians had to overcome **subconscious ties** to another physician and also Attorneys had to overcome **subconscious ties** to another attorney.

The **subconscious ties** that predominate in (0208) and 94-9328 are the facts that: (1) Judges do not **perceive value** in a jury trial that two pro se laypersons bring against 451 NYS Judges, Justices and Attorneys. (2) Judges openly admit that they desire an attorney to bring Tom's and Mary's suit/appeal. Yet, any attorney who did so would be committing legal career suicide. This **subconscious tie** is just as likely to be the cause

of Chief Judge Griesa's "errors" as the "Conflicts of Interest" asserted in our attached affidavit in support hereof.

Other **subconscious ties** that exist are: (1) We accuse defendants of intentional torts. (2) We not only seek damages to "make Tom and Mary whole" but also we seek **treble damages** under 28 USC § 1367 for liability under NYS's Judiciary Law Article 15 § 487. (3) We seek exemplary damages for both Mary and also for a charitable trust. (4) We seek personal injury "pain and suffering" damages to Mary.

One Governor's attempted personal gain is the sold cause of (0208) and 94-9328. Tom and Mary are innocent bystanders to Cuomo's Greed! This "abuse of public office power" should not be repeated by other greedy state governors. But the only method of preventing repetition is for Tom and Mary **to win** this appeal. Both the Second Circuit **panel** that decides our case and also the **Judge** who acts as overseer of the subsequent jury trial, in order to prevent future "abuse of public office power" must be able to overcome these **subconscious ties!**

CONCLUSION

This Court should perform every act necessary to ensure that, somehow, 94-9328 is decided by a truly **disinterested panel** of Judges who base their decision only upon facts and law. If we prevail, Chief Judge Newman should invoke 28 USC 291 (a) or (b), as required, in order to obtain both a venue and also a **trial judge** who is also as **disinterested** as the panel.

Respectfully Submitted:

Dated January 27, 1995

By "S/Thomas W. Moore
(6104)
Appellant Pro Se
139 Sleepy Hollow Lane
Congers, NY 10920-1515
(914) 268-6704

By "S/Mary L. Moore"
Appellant Pro Se
Address/Telephone same

APPENDIX H

ONE DAY EXPRESS MAIL

139 Sleepy Hollow Lane
Congers, NY 10920-1515
December 29, 1993

Honorable Jon O. Newman
Chief Judge of the Second Circuit, Court of Appeals
Room 1702
United States Court
New York, NY 10007

Re: Governor Cuomo's Usurpation of Judicial Power detailed in attached 32 page Complaint with Twenty-One Federal Questions per 28 USC § 1331

Dear Judge Newman:

A letter exactly like this is mailed to Chief Judge Griesa. The 113 Attorney Defendants named in attached Complaint "Speak for themselves".

It is unlikely that, due to their personal relationship with either one of said Defendants or with Cuomo's Brooklyn Law partners or with some other Attorney or public figure, that **ANY JUDGE** in any NYS District Court or the Second Circuit will consider themselves to be **DISINTERESTED** to the degree to ensure the decisions, rulings and Orders that will be necessary to return to Right of Citizenship to both Plaintiffs.

Time began to run on (1) 4/29/93 (2) 7/23/93 or 11/21/93. We attempted to use every legal means to avoid being forced to bring this Civil Action Pro Se. No Attorney will commit legal career suicide by representing us in this serious case against these powerful and influential 114 Defendants including the NYS Court System.

We will need Qualified Legal expertise with which to consult. However, this is just one of the decisions this Disinterested Judge needs to make. Defendants cannot be allowed to learn who said Counselor is.

Due to the multiple questions and tough decisions contained in the attached complaint, we do not know where to file our Summons and Complaint. We humbly mention 28 USC § 291 et seq. as a possible alternative of yours. We also ask you to rule that your receipt of this Complaint tolls the statute of limitations on both "Tom's case" and also "Mary's case".

Respectfully,

"S/Thomas W. Moore"
Plaintiff Pro Se

ONE DAY EXPRESS MAIL

139 Sleepy Hollow Lane
Congers, NY 10920-1515
December 29, 1993

Honorable Thomas P. Griesa
Chief Judge of the United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Governor Cuomo's Usurpation of Judicial Power detailed in attached 32 page Complaint with Twenty-One Federal Questions per 28 USC § 1331

Dear Judge Griesa:

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Time began to run on (1) 4/29/93 (2) 7/23/93 or 11/21/93. We attempted to use every legal means to avoid being forced to bring this Civil Action Pro Se. No Attorney will commit legal career suicide by representing us in this serious case against these powerful and influential 114 Defendants including the NYS Court System.

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Respectfully,

"S/Thomas W. Moore"
Plaintiff Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THOMAS W. MOORE, MARY L. MOORE, Plaintiffs. vs. NEW YORK STATE (Hereafter NYS) COURT SYSTEM, MARIO M. CUOMO as Governor NYS, ANN TOM MIKOLL as Justice of NYS Supreme Court Appellate-Division Third Department (Hereafter JSC Ad-3d), PAUL J. YESAWIDCH Jr. JSC AD-3d D. BRUCE CREW III JSC AD-3d THOMAS E. MERCURE JSC AD-3d NORMAN L. HARVEY JSC AD-3d JOAN B. LEFKOWITZ JSC, PATTERSON, BELKNAP, WEBB & TYLER as a Partnership of Attorneys with Professional Corporations, MARIO M. CUOMO as an Individual Attorney (Hereafter Esq.), ANN T. MIKOLL Esq. PAUL J. YESAWICH Jr. Esq., D. BRUCE CREW III Esq., THOMAS E. MERCURE Esq., NORMAN L. HARVEY Esq., JOAN B. LEFKOWITZ Esq., JOHN D. WINTER Esq., Defendants.	CIVIL ACTION NO. COMPLAINT AND DEMAND FOR JURY TRIAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Courthouse
40 Foley Square - Room 1702
New York, NY 10007

GEORGE LANGE III
CLERK

January 5, 1994

Mr. Thomas W. Moore
139 Sleepy Hollow Lane
Congers, NY 10920-1515

Dear Mr. Moore:

Your letter dated December 29, 1993, addressed to Chief Judge Newman has been referred to this office for response.

As you have no case pending before this Court, we are unable to render any assistance to you.

Very truly yours,

"S/Carolyn Clark Campbell"
Chief Deputy Clerk

CCC:en
cc: Hon. Jon O. Newman, Chief Judge